IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11881 of 2003
With
CIVIL APPLICATION No. 8289 of 2005
In SPECIAL CIVIL APPLICATION No. 11881 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

PRABHATSINH RAMSINH PARMAR - Respondent(s)

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Appearance :
MS MONALI H BHATT for Petitioner(s) : 1,
MR JS BRAHMBHATT for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/11/2005

ORAL JUDGMENT

1. By way of this petition, the petitioner has challenged the award dated 12.07.2001 passed by the Labour Court, Vadodara in Reference (LCV) No.280/1998

whereby the Labour Court has set aside the order of dismissal of the respondent dated 30.09.1993 and directed the petitioner to reinstate the respondent on his original post with continuity of service alongwith 75% backwages and all other consequent benefits. The Labour Court has also imposed a penalty of stoppage of three annual increments without future effect.

2. The brief facts of the case are that the respondent was serving as conductor in the petitioner corporation. In view of certain negligence, the petitioner corporation issued charge-sheet to the respondent wherein it was alleged that the respondent was absent from duties for the period 16.11.1992 to 31.12.1992 without obtaining prior permission for leave which caused loss to the petitioner corporation and difficulties to the public at large. The respondent was served with the show-cause notice and a departmental inquiry was held where he was given sufficient opportunity of personal hearing. On 30.09.1993 the petitioner corporation imposed punishment of dismissal from services of the corporation with immediate effect. The respondent then raised an industrial dispute before the conciliation officer which was referred to the Labour Court, Vadodara which passed the award as stated herein above.

3. Ms Monali H Bhatt, the learned advocate for the petitioner has contended that the Labour Court has not appreciated that it has no jurisdiction to entertain or decide any dispute pertaining to the petitioner corporation since the petitioner corporation is not an industry within the meaning of Section 2(J) of the Industrial Disputes Act. She has further contended that the Labour Court has not taken into consideration the fact that the petitioner corporation has suffered economic loss and damage of goodwill due to the negligence of the respondent towards his duties.

4. Learned Counsel for the respondent submitted that the Labour Court has considered all the facts and circumstances of the case while passing the award. He submitted that the Labour Court has awarded only 75% backwages and imposed a penalty of stoppage of three increment without future effect and therefore this court may not interfere in the petition.

5. As a result of the hearing and perusal of record, I am of the opinion that the Labour Court while exercising its powers under section 11A and while substituting penalty of dismissal committed an error in not imposing a

penalty in consonance with the gravity of misconduct of the respondent. Looking to the overall circumstances and the past records of the respondent, I am of the opinion that interest of justice would be met by imposing a penalty of stoppage of three increments with future effect.

5. The Labour Court has also committed an error in granting backwages to the respondent while exercising power under section 11A of the Act. Therefore, the award qua backwages is required to be quashed.

6. In the premises aforesaid, this petition is allowed. The award granting 75% backwages is quashed and set aside. A penalty of stoppage of three increments with future effect in place of stoppage of three increments without future effect is imposed upon the respondent. The award of the Labour Court is modified to the aforesaid extent. It is directed that the award will be implemented within six weeks from today. Rule made absolute accordingly with no order as to costs.

6. Since the main petition has been disposed of, the Civil Appln. No.8289/2005 would not survive and is accordingly disposed of.

(K.S. JHAVERI, J.)

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